

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

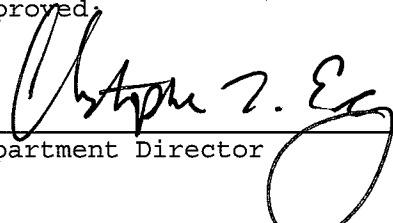
12-0348R

RESOLUTION AUTHORIZING A NON-DISTURBANCE AND ATTORNMENT
AGREEMENT WITH AAR AIRCRAFT SERVICES, INC. FOR THE MRO
FACILITY LEASE

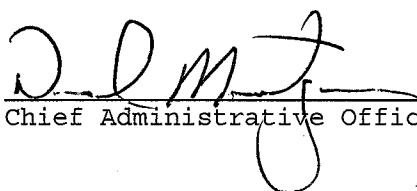
CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to enter into a non-disturbance and attornment agreement substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with AAR Aircraft Services, Inc. and the Duluth Airport Authority pertaining to leasing of the maintenance, repair and overhaul facility at the Duluth international airport.

Approved:


Department Director


Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

ATTY/DEDA BA/HTB:bel 07/03/2012

STATEMENT OF PURPOSE: This resolution authorizes a non-disturbance and attornment agreement with AAR Aircraft Services, Inc pertaining to leasing of the MRO facility at the Airport.

The MRO facility is located on land owned by the City and operating by the Airport Authority pursuant to the Airport Authority's enabling legislation. As originally structured, the City and the DAA leased the property to DEDA which then subleased it to NWA for the MRO facility. When NWA went through bankruptcy, DEDA received the building and facility but they are still subject to the original ground lease between the City and the DAA and DEDA. Since the MRO facility was turned over to DEDA, it has been paying all of the costs of maintaining and operating the facility.

As DEDA is the entity leasing the facility to AAR but it is located on land leased from the City and DAA, AAR has asked for a non-disturbance and attornment agreement from the City and the DAA which essentially provides that if for any reason the City and DAA were to terminate the ground lease with DEDA, AAR could continue to operate on the leased premises under the terms of the lease for its duration. In circumstances such as this such agreements are common in the real estate industry.

Non-Disturbance and Attornment Agreement

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "**Agreement**"), is made this ____ day of July, 2012 by and between **CITY OF DULUTH, MINNESOTA**, the **DULUTH AIRPORT AUTHORITY**, (collectively referred to herein as the "**Ground Lessor**") and **AAR AIRCRAFT SERVICES, INC.**, an Illinois corporation and its successors and permitted assigns (the "**Tenant**").

RECITALS:

A. Ground Lessor is the ground lessor pursuant to that certain Ground Lease dated December 21, 1994, as the same has heretofore been amended (the "**Ground Lease**"), by and between Ground Lessor and Duluth Economic Development Authority, an economic development authority under Minnesota statutes (the "**Ground Lessee**") for certain premises legally described therein (the "**Property**") of which the Premises are a part.

B. Ground Lessee and Tenant have entered into a Lease Agreement (the "**Lease**") dated June 29, 2012 which demises the premises described on Exhibit A attached hereto (the "**Premises**") to Tenant for a term of seven (7) years commencing on June 29, 2012, and giving Tenant five (5) option(s) to extend for five (5) years each for a total of twenty-five (25) additional years. A true, correct and complete copy of the Lease is attached hereto as Exhibit B.

C. Tenant has requested an agreement from Ground Lessor that, notwithstanding the termination of the Ground Lease solely by reason of a default by Ground Lessee, Tenant's possession of the Premises shall not be disturbed.

D. Ground Lessor is willing to agree on behalf of itself, and its successors and assigns, not to disturb Tenant's possession of the Premises under the Lease, provided Tenant attorns and recognizes Ground Lessor as the landlord under the Lease and only under the other terms and conditions hereinafter provided.

AGREEMENTS

In consideration of the mutual covenants herein made and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Tenant acknowledges and agrees that the Lease is and shall be subject and subordinate in all respects to the Ground Lease and to all of Ground Lessor's interests in the Property.

2. In consideration of the agreements of Tenant as set forth in this Agreement, Ground Lessor hereby agrees with Tenant as follows:

(a) If the Ground Lease is terminated as a result of either (i) Ground Lessor retaking possession of Ground Lessee's interest in the Premises, or (ii) the termination of the Ground Lease by reason of a default by Ground Lessee that is not cured within all applicable notice and cure or grace periods provided under the Ground Lease (any of the foregoing events described in clauses (i) and (ii) being individually referred to as a "**Termination Event**" or together as the "**Termination Events**"); and

(b) If at the time of a Termination Event all of the following conditions are fulfilled with respect to Tenant's Lease:

(i) the term of the Lease, including any properly exercised extensions and renewals of such term provided for in the Lease (the "**Lease Term**") has not expired; and

(ii) the Lease has not been terminated; and

(iii) Tenant is not in default in the performance or observance of any of the terms, covenants, provisions, representations, warranties, agreements, conditions or obligations contained in the Lease (beyond any applicable notice and cure or grace periods afforded Tenant in the Lease) or this Agreement; and

(iv) Tenant promptly executes and delivers to Ground Lessor an instrument in such form as is requested by Ground Lessor to evidence Tenant's attornment to Ground Lessor as provided in paragraph 4 below;

then Ground Lessor agrees, for itself and its successors and assigns, that none of the foregoing will (x) evict Tenant from the Premises, (y) interfere with Tenant's quiet and peaceable enjoyment of the Premises, or (z) terminate or disturb Tenant's leasehold estate under the Lease, and that the Lease shall continue in full force and effect on the terms and conditions set forth therein, except as otherwise provided in paragraphs 3 and 4 below.

3. If the terms and conditions set forth in paragraph 2 above are fulfilled, the effect of the agreement set forth in said paragraph 2 will be to establish direct privity of estate and contract between Tenant and the Ground Lessor with the same force and effect as though the Lease had originally been made directly by the Ground Lessor with Tenant on identical terms to the Lease for the balance of the unexpired Lease Term.

4. Without limitation of the foregoing, Ground Lessor and Tenant further agree that if a Termination Event occurs prior to the expiration of the Lease Term, then from and after the date that the Ground Lessor first takes possession of Ground Lessee's interest in the Premises (the "**Possession Date**"), Tenant hereby covenants and agrees to make full and complete attornment to Ground Lessor for the balance of the Lease Term, upon the same terms, covenants and conditions as therein provided, so as to establish direct privity of estate and contract as between Tenant and the Ground Lessor, with the same force and effect as though the Lease were originally made directly from the Ground Lessor to Tenant and Tenant will thereafter make all rent payments and any other payments under the Lease thereafter directly to the Ground Lessor at the place Tenant is notified in writing to make such payments.

5. Nothing contained in this Agreement shall in any way impair or affect the terms of the Ground Lease.

6. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

7. All notices and other communications in connection with this Agreement shall be in writing, and any notice or other communication shall be deemed delivered to the addressee thereof (i) when actually delivered at the address set forth below for such addressee, or (ii) one (1) day after deposit with a reputable overnight courier service providing delivery receipts, delivery charges prepaid, or (iii) three (3) days after deposit thereof in any main or branch United States post office certified or registered mail, postage prepaid, return receipt requested, in each case, properly addressed to the parties, respectively, as follows:

For notices and communications to Ground Lessor:

City of Duluth
411 West First Street, Room 400
Duluth, MN 558802
Attn: Director of Business and Economic Development

Duluth Airport Authority
4701 Grinden Drive
Duluth, MN 55811
Attn: Executive Director

For notices and communications to Tenant:

AAR Aircraft Services, Inc./c/o AAR Corp.
1100 N. Wood Dale Road
Wood Dale, IL 60191
Attn: General Counsel

with a copy to:

Schiff Hardin LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
Attention: Joshua R. More

Persons to whom copies of notices are designated to be sent are to be provided such copies for information purposes only; such copies need not be sent via certified or registered mail or by overnight courier or other delivery service; and failure of any person to send or receive any such copy shall not affect the validity of notice otherwise given to a party in compliance with the provisions of this Agreement. The parties may from time to time designate other addresses for notice by giving written notice as herein provided.

8. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, but such remaining provisions shall be interpreted, applied and enforced so as to achieve, as near as may be, the purposes and intent of this Agreement to the greatest extent not prohibited by law.

9. This Agreement shall not be recorded by either party, and any recording or attempted recording of this Agreement by Tenant shall immediately void this Agreement.

10. This Agreement shall inure to the benefit of the parties hereto and their respective successors and assigns.

[Signature Pages Follow]

IN WITNESS WHEREOF, The City of Duluth has executed the foregoing Non-Disturbance and Attornment Agreement as of the day and year first above written.

CITY OF DULUTH, MINNESOTA

By: _____

Its: _____

ATTEST:

City Clerk

Countersigned:

City Auditor

Approved as to form:

City Attorney

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

I, _____, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT before be personally appeared, Don Ness and Jeffrey Cox, the Mayor and City Clerk, respectively of the **CITY OF DULUTH, MINNESOTA**, and acknowledged said instrument to be the free act and deed of said City.

GIVEN under my hand and Notarial Seal this _____ day of July, 2012.

Notary Public

My Commission Expires:

IN WITNESS WHEREOF, the Duluth Airport Authority has executed the foregoing Non-Disturbance and Attornment Agreement as of the day and year first above written.

DULUTH AIRPORT AUTHORITY

By: _____
Its President

By: _____
Its Secretary

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

I, _____, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT, before me personally appeared _____ and _____, the President and Secretary respectively, of the Duluth Airport Authority, and acknowledged said instrument to be the free act and deed of said Authority.

GIVEN under my hand and Notarial Seal this _____ day of July, 2012.

Notary Public

My Commission Expires:

EXHIBIT A

Description of Premises

[insert legal description]

EXHIBIT B

Copy of Tenant's Lease

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